

**A Cooperative Agreement Between  
The Department of Public Instruction  
and  
The Department of Health and Human Services**

**I. Purpose**

It is supportive of the missions of both the Department of Public Instruction (DPI) and the Department of Health and Human Services (DHHS) to develop clearly defined procedures in order to facilitate the provision of appropriate educational, treatment and habilitation services to children and youth with disabilities. The purpose of this agreement is to facilitate a clear understanding of and compliance with the regulations set forth under *Part B* of the Individuals with Disabilities Education Act [*IDEA (Public Law 101-476)*] and the new amending statutory requirements of the *IDEA* effective May 11, 1999 added by *Public Law 105-17* as they pertain to children with disabilities served by both agencies. The contents of this agreement are designed to delineate responsibilities and provide guidance for the parties of this agreement to ensure a comprehensive and coordinated delivery of services consistent with those ensured under *Part B of the IDEA* and *G.S. 115C-110* for the provision of a free and appropriate education for all children with disabilities. These agreements intend to support and encourage joint and collaborative special education and treatment planning and programming which are family-centered and coordinated to include local programs and agencies of the DPI and the DHHS.

**II. Authority**

The State Educational Agency is responsible for ensuring that all requirements set forth in the *IDEA* are carried out. These interagency agreements provide a mechanism of coordination with non-educational public agencies to ensure compliance with these regulations. These procedures set forth in this agreement shall be consistent with the regulations and rights of children with disabilities and their parent(s), guardian(s), or surrogate parent(s) as specified in both state and federal statutes, administrative codes and implementing regulations. This authority is established by the following: *The North Carolina General Statutes, Chapter 115C, Article 9; North Carolina State Board of Education Procedures Governing Programs and Services for Children with Disabilities; North Carolina General Statutes, Chapter 122C, Article 5; North Carolina General Statutes 7A-647(3); 7A-649(I), (6), (10); and Public Law 105-17, CFR Parts 300 and 303.*

**III. Substance of Agreement-Procedures**

The DPI, Local Education Agencies (LEA's), DHHS and Area Mental Health, Developmental Disabilities and Substance Abuse Services (Area Programs) mutually agree to the following procedures to ensure compliance with the aforementioned state and federal mandates and the coordination of educational and treatment services for children with disabilities served by the agencies that are parties to these agreements.

A. All parties agree to the following procedural obligations relative to LEA's:

1. that LEA's are responsible for providing procedural and substantive rights to the parent(s), guardian(s) or surrogate parent(s) and the development and implementation of an individualized education program (IEP) for any child with a disability determined eligible in accordance with 34 CFR 300.534 and as defined in § 300.7. All IEP's will be developed in accordance with the provisions of 34 CFR 300.340-347.
2. that where a LEA has knowledge of a child with a disability who is a client of an Area Mental Health, Mental Retardation and Substance Abuse Program (Area Program) or program administered by the State DHHS, the respective LEA should provide prior notice to appropriate representatives from the State or Area Program inviting such parties to participate in the development of the child's IEP and to provide input into decisions regarding the services and placement appropriate for IEP implementation.
3. that upon the receipt of appropriate prior notice and request from representatives of the Area Program, the appropriate representatives of the LEA should participate in the development of the child's individualized treatment/habilitation plan and assist in the coordination of educational and treatment planning on behalf of children with disabilities. The LEA shall disclose educationally relevant information to the Area Program or State DHHS Program in accordance with the provisions set forth in the Family Educational Rights and Privacy Act (FERPA) (Authority; 20 U.S.C. Section 1232g). Such provisions prohibit the release of school records or disclosure of information obtained from such records without written prior consent from the parent(s), guardian(s) or surrogate parent(s) which delineates the specific records disclosed, the purpose of such disclosure and the parties to whom the disclosure may be made. Representatives of the LEA are allowed to share information based on their personal knowledge or behavioral observations of the child without such prior parental consent as long as such information does not rely on the contents of the educational record.
4. that LEA's should provide or pay for transportation necessary for the provision of a free and appropriate public education for students enrolled in community-based programs under the supervision of the LEA and day treatment/educational programs administered collaboratively between the LEA and the Area Program.
5. that any student enrolled in a school program administered by the State DHHS shall be provided instruction in the general curriculum as indicated in *The North Carolina Standard Course of Study* unless otherwise indicated in the student's IEP developed in accordance with *1507 Procedures Governing Programs and Services for Children With Disabilities*. Curricular offerings should enable the respective child to receive credits upon the return to a LEA or a high school diploma or certificate upon the

successful completion of the required course of study in the school program operated by the State DHHS.

6. that the LEA should request of and provide collaborative assistance to the Area Program in order to:
  - provide a portal of entry into placement of children and youth into state psychiatric hospital programs and residential treatment programs administered by the State DHHS in accordance with *G.S. 122-C, Article 5*;
  - facilitate coordination in the process of providing diagnostic services, treatment, education and care for children and youth with disabilities; and,
  - develop interagency linkages which will facilitate the increased accessibility of a comprehensive array of services that address the physical, emotional, social and educational needs of children and youth with disabilities.
7. that where a LEA has knowledge that a child is a client of an Area Program or program administered by the State DHHS, the LEA should disclose educationally relevant student information and received educationally relevant client information from the Area Program or State DHHS Program with re-disclosure prohibited absent parental permission. Educationally relevant information should include test results for required student identification, behavioral observations and recommendations for the IEP. Confidential information should be disclosed by the Area Program or State DHHS Program to the LEA in accordance with *G.S. 122C-53(a)* or *122C-55(f)*.

B. All parties agree to the following procedural obligations relative to these school programs administered by the DHHS:

1. The North Carolina School for the Deaf at Morganton, Central North Carolina School for the Deaf, Eastern North Carolina School for the Deaf, and Governor Morehead School
  - a. The above-mentioned schools, including pre-school programs, should promptly notify the LEA within which attendance zone the parent(s), guardian(s), or surrogate parent(s) of the child reside when a child is presented for an evaluation or seeking enrollment.
  - b. The evaluation should be conducted in accordance with *34 CFR.532* and *300.533* and should be sufficiently comprehensive to identify all the child's special education and related services needs whether or not such needs are commonly linked with a specific disability category.
  - c. Following the completion of all components of the multidisciplinary evaluation the above-mentioned schools should within 15 days notify and send a copy of the results of such evaluation to the appropriate LEA. Representatives from the

DHHS school program should upon request of the LEA provide interpretation of the evaluative results and participate in educational planning and service delivery on behalf of the child with a suspected disability. The disclosure of the evaluative results shall be consistent with the Family Educational Rights and Privacy Act [*FERPA (Authority; 20 U.S.C. Section 1232g)*] that provides statutory exceptions to prior consent requirements for release and disclosure of this confidential information to other school officials that have legitimate educational interests [*Section 99.31 (a)(1) FERPA*]

- d. If the child is determined to be an eligible child in accordance with CFR 300.534 and whose educational needs can not be satisfactorily met in a less restrictive educational environment as delineated in CFR 300.550 the IEP Committee may consider referral for placement and enrollment in one of the aforementioned DHHS school programs.
  - e. A referral for enrollment should be sent to the appropriate DHHS school if deemed appropriate by the IEP Committee. The DHHS should provide the LEA with documentation regarding the determination by the DHHS schools relative to the appropriateness of the students' referral for admission or denial for enrollment.
  - f. Following the final determination regarding the consideration of enrollment in one of the DHHS school programs, the LEA and the DHHS school program should collaborate in the coordination of a transition into the DHHS school program or in developing the services necessary for the provision of a free and appropriate education for the child in the child's LEA.
  - g. When planning for the child's transition from the DHHS school program to a community setting the respective DHHS school program should provide invitation to representatives of the LEA within which the child will be provided educational services following his/her release to participate. Notification of the child's imminent discharge should be provided to such LEA at least 30 days prior to such release.
  - h. Personnel of the respective DHHS school program shall make the parent(s), legal guardian(s), or surrogate parents(s) aware of this agreement and shall inform them of the procedural safeguards and due process rights as prescribed by 34 CFR 300.504 upon the initial enrollment of a child with a disability or upon the determination of eligibility in accordance with 34 CFR 300.530-300.536.
2. State Psychiatric Hospitals (Cherry, Dorothea Dix, John Umstead, and Broughton), DHHS Residential Treatment Programs [Wright School, Whitaker School, Eastern Adolescent Treatment Program (EATP) and Butner Adolescent Treatment Center

(BATC).] and Mental Retardation Centers (O'Berry, Murdoch, Western Carolina, Caswell and Black Mountain Centers)

- a. If the child is determined to be an eligible child in accordance with CFR 300.534 and whose educational needs can not be satisfactorily met in a less restrictive educational environment as delineated in CFR 300.550 the IEP Committee may consider referral for placement and enrollment in one of the aforementioned State DHHS Psychiatric Hospitals (SPH), Residential Treatment Programs (RTP) or Mental Retardation Centers (MRC).
- b. Such referral should be made through the appropriate Area Mental Health, Developmental Disability and Substance Abuse Program (Area Program) and shall be consistent with the provisions set forth in G.S. 122C-57. The respective Area Program should serve as the portal of entry and liaison between the LEA and the SPH, RTP or MRC.
- c. A referral for admission should be sent to the appropriate DHHS SPH, RTP or MRC if deemed appropriate by Area Program.. The Area Program should provide the LEA with documentation regarding the determination by the DHHS SPH or RTP relative to the appropriateness of the students' referral for admission or denial.
- d. Where a minor child is voluntarily admitted in a DHHS SPH, RTP or MRC the child's legally responsible person has the right to consent to or refuse any treatment offered by the facility unless there is an exception as stipulated in G.S.122C-57. (d). A written consent from the parent(s), guardian(s), or person(s) standing in loco parentis should be signed authorizing the SPH to disclose and notify the Area Program and the appropriate LEA of the admission. The SPH should request of and receive from the LEA educational records consistent with the provisions in the Family Educational Rights and Privacy Act [FERPA (Authority; 20 U.S.C. Section 1232g)] that provides statutory exceptions to prior consent requirements for release and disclosure of this confidential information to other school officials that have legitimate educational interests [Section 99.31 (a)(1) FERPA] A discharge of a voluntarily admitted minor shall include notice to and consultation with the minor's legally responsible person.
- e. Where a minor child is involuntarily committed in a DHHS SPH as determined by 122C-57 (e) consent from the child's parent(s), guardian(s) or person(s) standing in loco parentis is not required for authorization to disclose to the Area Program and the appropriate LEA of the child's commitment in the SPH and release of educational records in order to coordinate the provision of educational services.

- f. that upon request from the SPH, RTP or MRC the representatives from the LEA should provide input into the development and implementation of the IEP for children with disabilities enrolled in school programs located in the DHHS SPH or RTP.
- g. When planning for the child's transition from the DHHS SPH, RTP or MRC school program to a community setting the respective DHHS school program should provide invitation to representatives of the LEA within which the child will be provided educational services following his/her release to participate. Notification of the child's imminent discharge should be provided to such LEA at least 30 days prior to such release.
- h. Personnel of the respective DHHS school program shall make the parent(s), legal guardian(s), or surrogate parents(s) aware of this agreement and shall inform them of the procedural safeguards and due process rights as prescribed by *34 CFR 300.504* upon the initial enrollment of a child with a disability or upon the determination of eligibility in accordance with *34 CFR 300.530-300.536*.
- i. Personnel of the respective DHHS school program shall make the parent(s), legal guardian(s), or surrogate parents(s) aware of this agreement and shall inform them of the procedural safeguards and due process rights as prescribed by *34 CFR 300.504* upon the initial enrollment of a child with a disability or upon the determination of eligibility in accordance with *34 CFR 300.530-300.536*.

C. All parties agree to the following procedural obligations relative to Area Mental Health, Developmental Disabilities and Substance Abuse Services (Area Programs)

- a. that upon the request by the LEA, representatives from the Area Program should provide input into the development and implementation of the IEP for children with disabilities who are clients of the Area Program;
- b. that Area Programs may charge as delineated in *G.S. 122C-146* in accordance with established fee schedules for mental health treatment services but may not charge parent(s), guardians(s), or surrogate parent(s) of a child with a disability for special education or related services determined necessary for the provision of a free and appropriate public education;
- c. that in accordance with *.1523 Procedures Governing Programs and Services for Children with Disabilities* the State DHHS is responsible for providing or paying for transportation necessary for the provision of a free and appropriate public education to children with disabilities enrolled full time in programs administered by the State DHHS.

D. All parties agree to the following procedural obligations relative to County Department of Social Services (DSS)

- a. If a child with a disability and eligible as defined in accordance with G.S. 115C-108 is in the legal custody of one the county DSS and it becomes necessary to relocate the child's domicile to a residence located within the attendance zone of another LEA, the director of the DSS with legal responsibility shall notify the office of the superintendent of the receiving LEA and the surrogate parent(s) of the child's move for the purpose of initiating educational planning.
- b. The director of the DSS who agrees to provide and supervise care for the child who is in the legal custody of another county DSS shall promptly notify the office of the superintendent of the receiving LEA of the child's move for the purpose of initiating educational planning.
- c. If the county DSS with legal custody of the child will continue to supervise the child's care, then it is the responsibility of the DSS of legal custody to notify the LEA into which attendance zone the child is moving.

E. Mechanism for resolving interagency disputes regarding the provision of special education or related services necessary for ensuring a free and appropriate public education to children with disabilities.

1. Resolutions to differences of opinion between the LEA and the program or school administered by the DHHS regarding the provision of or proposed changes in the special education or related services to EAVC with disabilities should be negotiated initially by representatives of a local interagency group.
2. If disputes or differences of opinion continue to exist between the LEA and the school or program operated by the DHHS following local negotiations: the local education should submit a written summary of issues pertinent to such disputes to the Director of the Exceptional Children Division in the North Carolina DPI; the program or school administered by the DHHS should submit a written summary of issues pertinent to such disputes to the Superintendent, DHHS.
3. The Director of the Exceptional Children Division should contact the Superintendent, DHHS in order to negotiate an appropriate resolution to the disputed services or proposed changes necessary for a child with a disability to receive a free and appropriate public education.
4. The Superintendent of the DHHS has the authority to direct any program or facility operated by the DHHS to provide special education and related services necessary for the provision of a free and appropriate public education to children with disabilities. The Superintendent shall issue an advisory ruling on an appropriate resolution to the respective program or school subject to disputed services or proposed changes necessary for a child with a disability to receive a free and appropriate public

education.

5. Any party aggrieved by the proposed resolutions authorized by this agreement shall have all due process rights available under *20 USC 1415, G.S. 115C-116* and their implementing regulations. The term "party" includes any public program or agency affected by such action and the parent(s), legal guardian(s), or surrogate parent(s) of the child with disabilities. Failure of the party to pursue due process rights under *20 USC 1415 and G.S. 115C-116* within 30 days of notification of the decision shall constitute acceptance by such parties of the decision made pursuant to this agreement.

#### **IV. Fiscal Responsibility**

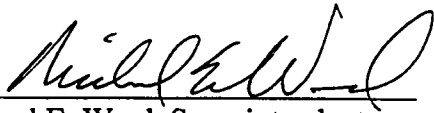
- A. All educational and related services that are needed to ensure the provision of an appropriate public education to students with disabilities and subject to this agreement shall be made available at no cost to the child or his/her parent(s), legal guardian(s) or surrogate parents.
- B. The DHHS is fiscally responsible for special education and related services in accordance with *Article 9* for children with disabilities provided by facilities administered by the DHHS. This fiscal obligation does not prevent the DHHS from charging for other services or treatments as delineated in *122C-146*.
- C. The DPI is fiscally responsible for special education and related services in accordance with *Article 9* for children with disabilities provided by schools and facilities administered by the Department. If the DHHS fails to provide or pay for special education or related services in accordance with *Article 9* for children with disabilities, the DPI shall provide or pay for these services in a timely manner and shall seek reimbursement from the DHHS in accordance with this agreement.
- D. The LEA within which attendance zone the group home, foster home or other facility is located shall bear the cost of providing a free and appropriate public education to children with disabilities placed in such homes or facilities pursuant to *G.S. 115C-366 (a) (1)*.

#### **V. Period of Agreement**

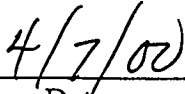
This agreement is effective when signed and shall remain in effect until canceled by one of the parties.

#### **VI. Modification/Cancellation Provision**

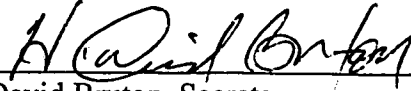
This agreement shall be reviewed annually by the undersigned for appropriate changes. Such changes or clarifications shall appear in memorandum format and shall be considered an amendment to the agreement and shall become operational when signed by all parties.



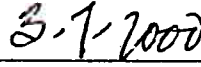
Michael E. Ward, Superintendent  
Department of Public Instruction



Date



David Bruton, Secretary  
Department of Health and Human Services



Date